APPENDIX 1

FORM DS-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

2449

AMEMBASSY,

TOKYO

A-49, July 23, 1952

SUBJECT: FCN Treaty. Interpretation of Certain Provisions Embassy Despatch 269, June 19, 1952.

There follow comments on the specific questions raised in reference Despatch:

a. The analysis of this question begins with the second sentence of Article XXII, Paragraph 3, which establishes that whether or not a juridical entity is a "company" of either Party, for treaty purposes, is determined solely by the place of incorporation. Such factors as location of the principal place of business or the nationality of the majority stockholders are disregarded. Under such a simple test, however, nationals of third countries could indirectly but effectively secure valuable treaty rights through taking advantage of liberal corporation laws. Thus to take a hypothetical example, citizens of country X which had refused to make a reciprocity treaty with Japan, and which was even on bad relations with Japan, might, nevertheless, enjoy unilaterally many business advantages in Japan, ordinarily accruing only to friendly treaty nations, by the device of setting up and operating through a Delaware corporation. The purpose of Paragraph 1(e) of Article XXI is to leave each party free to protect itself against such an eventuality, as it might wish, by allowing it to "pierce the corporate veil" of companies chartered under the laws of the other Party, for most treaty purposes.

FORM DS-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

Tokyo,
A-49, July 23, 1952

The rule of Article XXI, Paragraph 1(e) has to do with the treatment one party is obligated to accord to "companies" of the other party, such companies being as defined in Article XXII(3). The rule of the second sentence of Article VI, Paragraph 5, on the other hand, relates to "enterprises" in which such companies (or nationals) have a substantial interest. The word "enterprises" is not a synonym for "companies"; it is a much broader term, having to do with a business undertaking or establishment in the large and popular sense, regardless of juridical form, nationality, etc.

The rule of paragraph 1(e), Article XXI, has bearing on the second sentence of Article VI(5) only to the extent that the word "companies" is used therein. If an American-chartered company had a substantial interest in an enterprise in Japan, the Japanese Government would be obligated to give the treatment specified if such company were in fact American controlled, but not if such a company were controlled by nationals of third countries. The question of who controls the company is quite distinct from the question of who has what interest in the "enterprise" itself.

Thus the Japanese supposition that there is conflict between the provisions of VI(5) and XXI(1)(e) is not well grounded.

b. Article IX(1)(a) provides that Japanese nationals and companies shall have rights with respect to acquiring, using, and occupying land, structures, and other realty appropriate to the conduct of any activity in which they are entitled to engage

FORM DS-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

Tokyo,
A-49, July 23, 1952

pursuant to Article VII. The last sentence of Article VII(2) clearly provides for establishing and maintaining branches and agencies for the conduct of international transportation activity, which in the Department's intent covers international shipping. In order to make the last point clear, however, the Department authorizes the insertion of the words "shipping or other" before the word "transportation". Insofar, therefore, as tenure rights to wharves, warehouses, and other installations are reasonably necessary to the effective conduct of an international shipping operation, such rights are assured by Article IX(1)(a). Precisely what tenure rights may be reasonably necessary to the effective conduct of such an operation in a particular case, cannot, of course, be determined *in vacuo*; but the Department does not believe it is necessary to attempt to write more categorical language into the treaty on this point.

It should be further noted that Article XIX(3) provides for non-discrimination as to the access of vessels to ports, and to port and shipping facilities, insofar as such access is afforded to any international shipping on an other than tenure basis.

The right to enjoy the use of all appropriate facilities thus appears to be amply covered, without any further modification.

c. In analyzing the question here presented, it is necessary to distinguish between the ship operator, on the one hand, and the ship builder on the other. The ship operator engages in an establishment activity reserved from the treaty (Article VII(2), first

FORM DS-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

Tokyo,
A-49, July 23, 1952

sentence). Thus each party, so long as it does not violate some other provision of the treaty, retains full freedom to subsidize its own citizen-owned, national shipping, without being obliged to extend such subsidies to shipping owned by nationals of the other party.

The "citizens" referred to in 46 USC 1151 are ship operators. The construction subsidy is granted upon application of the ship operator, and on his behalf. The law does not specify that the ship builder, who is ultimately awarded the construction contract, be a citizen. The law speaks only of a "shipyard within the continental limits of the United States" (Sec. 1155) without reference to the nationalities of the owners of the shipyard. By contrast, the citizenship of the ship operator is repeatedly mentioned; and the avowed objective of the act (Sec. 1101) is to foster a citizen-owned merchant marine (not citizen-owned shipyard). As to the precise question of how this law is "interpreted", the Department is unaware that there has been occasion to interpret it on this specific point, or that any problem has ever arisen over it. The Department does not have the function of interpreting such laws; it can only point out that the law, contrary to the Japanese reading of it, does not provide that shipbuilding subsidies be restricted to American citizens.

The Department understands that the Embassy would like also two other points to be clarified, as follows:

FORM DS-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

Tokyo,
A-49, July 23, 1952

1. As to the right of non-resident recipients of benefits under Article IV to convert yen payments into dollars. This Article provides national treatment. This means that insofar as this Article is concerned, the American non-resident beneficiary has a treaty right to exchange convertibility only to the extent that a Japanese non-resident would enjoy this privilege under Japanese law and regulation.

Further than this, however, it may be noted that the non-resident American would have such rights as are provided in Article XII; that is, no restrictions on convertibility except as may be allowed by the second paragraph of that Article, and, in situations where restrictions are necessary and allowable, he would enjoy such advantages as may be afforded by the phrase "giving consideration to special needs for other transactions" in paragraph 3 and by the "no arbitrary discrimination" precept of paragraph 4.

2. As to the precise meaning of the terms "trade names" and "trade labels" in Article X — the Department would have only the following observation to add to the Embassy's previous report of its explanation: These terms are merely by way of illustrating, along with "patents" and "trade-marks", the more common types of industrial property. The phrase "industrial property of every kind" is all-inclusive. It is thus unnecessary to have, in connection with the treaty, highly refined and precise definitions of the concepts "marks", "names" and "labels". It

FORM D5-323
12-27-50

OUTGOING AIRGRAM

Department of State

RESTRICTED
CLASSIFICATION

Tokyo,
A-49, July 23, 1952

would indeed be quite permissible for Japanese and American law to differ substantially from each other in this and other industrial property matters. The Article's purpose is to provide national treatment with respect to whatever the laws of the country happen to provide with respect to recognizing and protecting industrial property; and the Japanese may make a free translation of secondary technical terms if transliteration proves to be difficult.

ACHESON

APPENDIX 2

Department of State

R 130506Z AUG 75
FM AMEMBASSY TOKYO
TO SELSTATE WASHDC 2418

UNCLAS TOKYO 11177

FOR L/SCA

E.O. 11652:N/A
TAGS: CGEN, CVIS, JA
SUBJECT: GOJ INTERPRETATION OF FCN TREATY

REF: TOKYO 3989, 28 MAR 75

1. AS INDICATED IN REFTEL GOJ FINALLY AUTHORIZED COMMERCIAL VISAS IN TWO CASES IN QUESTION ON STRICTLY AD HOC BASIS CONTENDING AMERICANS INVOLVED HERE WERE NOT ENTITLED TO TREATY BENEFITS. MFA STATES THAT ITS LEGAL ADVISERS HAVE NOT COMPLETED STUDY BUT ARE PRESENTLY OF VIEW THAT UNDER THE WORDING OF THE SECOND SENTENCE OF PARAGRAPH THREE OF ARTICLE XXII OF THE TREATY A COMPANY INCORPORATED IN JAPAN, OR AN INDIVIDUAL DOING BUSINESS AS SINGLE PROPRIETOR, EVEN THOUGH WHOLLY AMERICAN OWNED, IS NEVERTHELESS A JAPANESE COMPANY AND EXCLUDED FROM TREATY BENEFITS. THE SENTENCE IN QUESTION READS: QUOTE COMPANIES CONSTITUTED UNDER THE APPLICABLE LAWS AND REGULATIONS WITHIN THE TERRITORIES OF EITHER PARTY SHALL BE DEEMED COMPANIES THEREOF AND SHALL HAVE THEIR JURIDICAL STATUS RECOGNIZED WITHIN THE TERRITORIES OF THE OTHER PARTY. UNQUOTE.

2. EMB HAS ARGUED THAT GOJ INTERPRETATION CONFLICTS WITH THE GENERAL AIM OF THE

Department of State

TREATY WHICH IS TO PROMOTE TRADE AND INVESTMENTS BETWEEN OUR COUNTRIES. EMB HAS FURNISHED COMPLETE INFO TO MFA AS TO VIEW OF U.S. THAT NATIONALITY OF A MAJORITY OF THE STOCKHOLDERS CONSTITUTES THE NATIONALITY OF THE COMPANY. IT HAS ALSO POINTED OUT THAT NATIONALS OF A THIRD COUNTRY COULD NOT OBTAIN TREATY BENEFITS SIMPLY BY INCORPORATING IN JAPAN.

3. ACTION REQUESTED: IN ORDER THAT EMB MAY PURSUE THIS QUESTION FURTHER IN AN EFFORT TO OBTAIN MORE RECIPROCAL TREATMENT FOR AMERICANS DOING BUSINESS IN JAPAN, WITHOUT RELYING ON AD HOC DECISIONS, WHICH ARE TIME CONSUMING AND DIFFICULT TO OBTAIN, IT WILL BE APPRECIATED IF DEPT WILL FURNISH INFO AS TO WHETHER ANY OTHER COUNTRIES WITH WHOM WE HAVE FCN TREATIES ADHERE TO INTERPRETATION GIVEN BY JAPANESE. VIEWS OF MAJOR TRADING COUNTRIES SUCH AS FRANCE, GERMANY, ITALY, UNITED KINGDOM, NORWAY AND DENMARK WOULD BE MORE PERSUASIVE THAN SMALLER COUNTRIES. ANY OTHER IDEAS DEPT MIGHT HAVE ON THIS SUBJECT WOULD ALSO BE WELCOME. SHOESMITH.

UNCLASSIFIED

APPENDIX 3

Department of State

TO: AmEmbassy TOKYO

E.O. 11652: N/A
TAGS: CGEN, CVIS, EINV, JA

FROM: Department of State DATE: 1976 JAN-9 AM 9:45

SUBJECT: GOJ Interpretation of FCN Treaty

REF: Tokyo 11177

Department Legal Adviser's office has examined meaning of paragraph 3 of Article XXII of the U.S.-Japanese FCN Treaty signed at Tokyo April 2, 1953, and fully concurs with Embassy's general position as set forth reftel.

Most persuasive arguments we have found are (a) law review article on FCNs by Herman Walker, Jr., who formulated modern (i.e., post-WW II) form of FCN treaty and negotiated many FCNs; and (b) negotiating record of U.S.-Japan FCN, especially Dispatch No. 13 from Tokyo of April 8, 1952. Both documents are enclosed. Walker cites (pp 380-81), para 3 of Japanese FCN as standard definition of company for purposes of treaty, i.e., in the standard FCN treaty "A 'company' is defined simply and broadly to mean any corporation, partnership, company or other association which has been duly formed under the laws of one of the contracting parties; that is, any 'artificial' person acknowledged by its creator, as distinguished from a natural person, whether or not for pecuniary profit." This formulation is intended to avoid such complex questions as the law to be applied in determining company status. Every association meeting test of valid existence must have its "company" status duly recognized and is then eligible for substantive rights granted to companies under the treaty.

Department of State

In Dispatch 13 (p. 5), Jules Bassin, Legal Attache to Embassy, stated to Mr. Mikizo Nagai, Chief, Sixth Section, Economic Affairs Bureau, that "the recognition mentioned in the second sentence of paragraph 3 . . . meant merely the recognition by either Party of the existence and legal status of juridical persons organized under the laws of the other Party."

Thus, all that para 3 is meant to accomplish is the establishment of a procedural test for the determination of the status of an association, i.e., whether or not to recognize it as a "company" for purposes of the treaty. Once such recognition is granted, the functional rights accorded to companies under the FCN (for example, the Article VII rights of a company to establish and control subsidiaries) then accrue.

For reasons stated above, argument in para 2 of reftel that nationality of a company is determined by nationality of shareholders is not correct. Rather, a company has nationality of place where it is established (see pp. 382-83 of Walker). However, this does not mean that GOJ is free to deny treaty rights to U.S. subsidiary set up in Japan. While the company's status and nationality are determined by place of establishment, this recognition does not itself create substantive rights, which are dealt with elsewhere in the treaty. Thus, under Article VII of the Treaty, a national or company of either party is granted national treatment to control and manage enterprises they have established or acquired. Therefore, an American Company (i.e., one organized under U.S. law), may manage its Japanese subsidiary (i.e., a company set up under Japanese law). So too, under Article I, a U.S. national may enter Japan to direct his investment, even though the investment is a Japanese company. In sum, the substantive rights of U.S. nationals and companies vis-a-vis their Japanese investments accrue to them because the

treaty gives specific rights to U.S. nationals and companies as regards their investments, and it is irrelevant that, for the technical reasons noted above, the status and nationality of the investment are determined by the place of its establishment.

KISSINGER

Enclosures:

Herman Walker Law Review Article on FCNs
Dispatch No. 13 from Tokyo Apr. 8, 1952

APPENDIX 4

Department of State

Foreign Service Despatch

From:	HICOG BONN	2529
To:	The Department of State, Washington	March 18, 1954
Ref:	OURDES nos. 1355, October 28, 1953; 1372, October 30, 1953; and 2501 March 16, 1954	
Subject:	New Treaty of Friendship, Commerce, and Navigation: Report on March 16, 1954 Meeting with German Negotiators	

The 32nd regular business meeting for negotiation on the subject matter was held at the Foreign Office on March 16, 1954. Dr. Becker, as usual, served as chairman of the German team which included representatives of the Foreign Office and the Ministries of Economics, Justice, Labor and Interior. The U.S. side included Messrs. Boehringer, Levy, and Walker.

The meeting on March 16, was devoted to a detailed discussion of U.S. Article VIII on employment, professions, and non-profit activities, and U.S. Article IX on property rights.

Article VIII, Paragraph 1

The Germans stated that their preference remained to delete this paragraph, as being unnecessary, but that they were prepared to accommodate U.S. wishes for its retention in the treaty. They felt it to be in general acceptable as drafted, subject perhaps to linguistic clarifications and verification of their understanding of its intent. They had some questions to ask, in response to which the U.S. side developed answers as follows during the course of the discussion:

(1) The first sentence is of a general nature, being an elaboration of the principles of control and management set forth in Article VII, and is corollary thereto by emphasizing the freedom of management to make its own choices about personnel. Its major special purpose is to preclude the imposition of "percentile" legislation. It gives freedom of choice as among persons lawfully present in the country and occupationally qualified under the local law. The Germans said they might wish to suggest some linguistic revisions to clarify this last point. The

U.S. side said they did not feel that further clarification was essential, especially as the juxtaposition of the contrasting wording of the first and second sentences gives clear clarification by implication; but declared their willingness to consider any reasonable proposal, in deference to German views. No express clarification had been necessary in any other treaty, to the best recollection of the U.S. side.

R. N. Levy
Reporter

(2) The second sentence deals with a special and limited situation, and within its framework goes beyond the first sentence, inasmuch as it waives professional qualification requirements in the cases stipulated. These have to do with temporary jobs requiring special skills (e.g., for an American firm, competence in American law and accounting methods) for internal management purposes; and no right is created to engage in the general practice of a profession in the host country. In reference to the question of entry into the country, necessary entry privileges are implied. With specific reference to the needs of a German firm in the United States, procedures are understood to be available whereunder temporary visas can be issued in properly justified cases.

(3) The word "moreover" introducing the second sentence is merely a convenient connective, and has no special substantive significance. The Germans said that it did not carry over very well into German; and it was agreed that it be translated as *jedoch* in the German text.

(4) It was agreed to frame the first sentence in a manner similar to that agreed on for Article VII, paragraph 1, to wit:

> "Nationals and companies of Germany shall be permitted to engage within the territories of the United States of

America, and reciprocally nationals and companies of the United States of America shall be permitted to engage within the territories of Germany, accountants ..... et cetera."

Article VIII, Paragraph 2

It was agreed, as in the case of the preceding paragraph, to reframe the first sentence along the following lines:

"2. Nationals and companies of Germany shall be accorded wihin the territories of the United States of America, and reciprocally nationals and companies of the United States of America shall be accorded within the territories of Germany, national treatment and most-favored-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities, and shall be accorded the right to form associations for that purpose under the laws of the country...."

Article IX

Dr. von SPRECKELSEN from the Justice Ministry, who acted as principal technical spokesman for the German side, commented that some legal difficulties had arisen which had not been considered during the earlier discussion of U.S. Article IX in October, 1953 (see reference despatches) which required additional explanation. He noted that these difficulties pertained to existing German legislation with respect to the acquisition of real property by alien natural persons and by alien juridical persons "residing abroad".

Acquisition of Realty in Germany by Alien Natural Persons

The German side noted that limited restrictions only were applicable regarding the acquisition of real property by alien natural persons and that these curtailments were based not on Federal but on old *Laender* legislation applicable in Hamburg, Hesse, and the part of the Rhineland-Palatinate which formerly belonged to Eesse.

They explained that in the above-cited *Laender* the acquisition of real property by alien natural persons depended on authorization granted by the *Land* authorities and that the purchase contract could not be fulfilled until the required authorization had been obtained. They noted that the date of the purchase contract became valid for the acquisition once the authorization had been accorded, but that the purchase contract was voided if the required authorization were denied. They added that the acquisition of real property by alien natural persons was subjected to such an authorization not only in cases of acquisition by contract but also in instances of acquisition by intestate or testate succession. They stressed that the existing provisions were being liberally applied, and that reciprocity treaties had been in the past concluded by Germany with other countries which waived the authorization requirement if likewise the countries concerned did not impose restrictions for the acquisition of real property by German nationals.

Acquisition of Realty by Alien Juridical Persons Residing Abroad

Dr. von Spreckelsen observed that for the acquisition of real property by alien juridical persons residing abroad practically all *Laender* required the granting of an authorization before a purchase contract became valid. He stated that the *Laender* applied the provisions on a liberal basis, and that old German treaties had renounced the application in case other countries had been prepared to grant reciprocity to German juridical entities.

He concluded that in view of these existing requirements it was difficult for the German side to accept paragraph 2 of U.S. Article IX, and asked whether the United States had ever granted natural and juridical alien persons in the United States national treatment as a treaty right.

Department of State

The U.S. side reviewed U.S. treaty policy on this point and noted that only the 1853 treaty with Argentina provided for national treatment with respect to acquisition of title to real property, and then only in the case of natural persons. They added that the treaty with France originally negotiated about 100 years ago had contained a similar provision but had been rejected by the Senate as constituting undue interference in State rights; and that the policy of the Federal Government for years had been to abstain from interfering with State regulation of land ownership. They stated that the present text of paragraph 1, U.S. Article IX, which granted national treatment with respect to the leasing of land needed for treaty purposes without according a similar right for the holding of land by title, represented an internal U.S. compromise on the question of how far alien land tenure should be the subject of treaty commitments.

They stressed that the present text granted the greatest advantages for practical treaty purposes and added, with respect to clause 1(b), that many States did not have discriminatory provisions in their legislation. In this connection, they noted that half the States had no disability laws, and perhaps 15-18 other States had variously slight or partial disability provisions, such as South Carolina and Pennsylvania which applied acreage limitations of a rather mild sort; Nebraska, which permitted full ownership inside municipalities but not in rural areas; and Wisconsin which prevented large scale holding of farmland by aliens by imposing acreage limitations in rural areas. They added that only seven or eight States had severe disability laws as to alien tenure. They concluded that, accordingly, an alien would for the most part be accorded either national treatment or very liberal treatment in the United States with respect to matters of treaty concern, and that the U.S. proposed language granted *de facto*

reciprocity since any German *Land* could withhold rights to a U.S. natural or juridical person seated or domiciled in a State which imposed restrictions on Germans.

The U.S. side noted that the issue of property rights by treaty was sensitive in the United States; and also that the proposed text placed the responsibility for any right withheld from a U.S. national abroad on the States which maintained disability provisions in their law, and gave the legislatures concerned a practical occasion for reviewing the need for maintaining disabilities which had been first adopted long ago when conditions were different.

As to the enforcement of alien disabilities in the States, they said that no known permit system had been established and that the disability clauses were typically latent legal provisions that allowed the alien to take title good as against all the world except the State itself. As a consequence, they stated, an alien could buy land, use it, and in the typical jurisdiction have this right challenged only by public authority through the writ of office found. They explained that this ancient writ was often subject to limitations; in Minnesota, for instance, if the Attorney General of the State did not challenge the alien's right within a specified number of years, the title became immune to challenge. They concluded that, although paragraph 1 contained a reservation, its effects were normally of small consequence since there existed a large degree of alien ownership either by virtue of liberal laws or practical toleration.

The Germans countered that insofar as Germany was concerned sentence 2, paragraph 2 conveyed an apparent but not a real reciprocity since they had no federal law which afforded a possibility to prohibit U.S. nationals to own land. They added that the lack of comprehensive laws to apply the treaty provisions for natural persons as distinct from juridical persons, for

whom restrictions existed in practically all *Laender*, would make paragraph 2 meaningless. Referring to paragraph 4, U.S. Article IX, they observed that under the German license system the authorization, once granted, could not be revoked and that these considerations made it difficult for them to accept the U.S. formulation in paragraph 2.

The U.S. side answered that paragraph 4, U.S. Article IX, was a practical commitment to safeguard the alien against enforcement of the old common law theory under which he had no heritable blood, and its European counterpart the *droit d'aubaine*. They added that the five year period allowed the alien to sell his property at a full market price and thus protected him against spoliation or sacrifice sales. Regarding sentence 2 of paragraph 2, they stressed that it contained a latent reservation only, and that there was no problem in Germany since the treaty did not wish a country to worsen its laws but sought only to establish minimum rights. They explained that in accordance with its provision a *Land* could deny an authorization if similarly a State had a disability law and that on the other hand, a *Land* would grant the authorization automatically in case no State disability law existed. If a *Land*, however, did not in absence of the treaty impose an alien disability, the treaty most certainly would not in any way oblige it to change its system.

The German side countered that Article IX was the only Article in the present treaty with a marked and unbalanced reciprocity provision; and they suggested that paragraph 1 be redrafted in a mutual manner to parallel the other treaty provisions, and that paragraph 2 be deleted.

This German suggestion was followed by a further discussion of the merits of the U.S. proposal, which was answered by a German assertion that they feared that the U.S. draft might

provoke political difficulties for the treaty. Its conspicuous difference from the way the treaty generally was set up would necessitate justifications in detail before parliament at the time of ratification; and they were not confident that they could give explanations that would readily allay suspicions in the Bundestag and Bundesrat. They feared that maintenance of the U.S. proposed text might, therefore, prejudice early and harmonious ratification.

At this point, Dr. Pecker being temporarily called from the room, the discussion disgressed to the following three questions asked by Dr. von Spreckelsen:

(1) With respect to clause 1(b) whether the words "other rights" included mortgages, or what, stressing that in Germany restrictions were applicable for only acquisition of real property.

The U.S. side replied that a sure treaty right being only accorded under clause (a), the words "other rights" had been used on purpose to cover everything not in (a) falling within the scope of the concept "tenure of property".

(2) The second German question was whether it would be possible to stipulate sure treaty rights in those States whose laws made specific exception for treaty rights, specific mention being made of Missouri. In reply to that question, the U.S. side stated that, aside from the fact that the Missouri law, at one time at least, apparently pertained only to treaties existing at the time the law had been enacted, they felt the treaty had to be geared to the situation existing in the "hard core" group of States.

(3) The third German question pertained to the phrase "acquiring through judicial process" in paragraph 4. They asked whether this phrase was designed to cover a change of ownership as a result of sale of property under execution in case a mortgage on such property had not been repaid. They further went on to

say that in Germany alien and German alike would not become the owner of a property by mere purchase contract, but only after finalization by a contract of transfer (*Auflassung*). If a purchase contract was not fulfilled, suit could be brought against the seller. They asked whether such a law suit was also meant to be covered by the words "judicial process".

The U.S. side replied that if the reason for failure to fulfill the purchase contract was not due to interference by public authorities but solely based on willful and personal action of the seller, they did not see offhand the relevance of the latter question, though they would not hazard any final opinion. They suggested that Dr. von Spreckelsen was better qualified to analyze such a question; and they noted that their own legal counsel was unfortunately unable to attend today's session. They stated that though primarily the words "judicial process" had been motivated by a desire to cover mortgage foreclosures, wording had been chosen broad enough to cover other cases wherein a legal interest in property might be established by judgment of a court; for example, attachment in satisfaction of a debt other than a mortgage; enforcement of a dower right; or the property settlement growing out of a dissolution of marriage in a community property State. Dr. von Spreckelsen said that he would probably offer some language designed to clarify the term "judicial process", which was not a term that would be easily understood in Germany.

Department of State

Conclusion

Dr. Becker reverted to his proposal that paragraph 1 be mutualized, and paragraph 2 deleted. He stated that he wanted to stress that notwithstanding the resultant narrowing of the scope of the treaty provision, U.S. citizens and companies could rest assured of being accorded liberal treatment in Germany, in keeping with the basic purposes of the treaty to promote friendly intercourse and encourage broader business relations. He did not foresee that Americans would experience any difficulties in getting the property they might need in future.

It was finally agreed that the U.S. side would submit a redraft in compliance with Dr. Becker's proposal, and recommend it to the Department. The U.S. side stated, however, that they would be most happy to revert to the original U.S. proposal, if later after further consideration the Germans concluded that it would be feasible from the parliamentary viewpoints.

The redraft in question was prepared and handed to the Germans on March 17, copy enclosed.

Carl H. Boehringer
Commercial Attache
Commercial Attache Division

Department of State

Enclosure:

Suggested Redraft,
Article IX, paragraph 1

Coordination:

Mr. Herman Walker, Jr.

Copies to:

DHC
PA:OD
PA:LA
SUPCONGEN
OGC
E:OD
E:FNP
E:IND
E:FA
HICOG BERLIN ELEMENT (2)
Amcongen Bremen
Amcongen Hamburg
Amcongen Duesseldorf
Amcongen Frankfurt
Amcongen Stuttgart
Amcongen Munich